

THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
EASTERN DIVISION
NO. 4:09-CV-00181-D

REX T. GILBERT, JR. and)
DANIELA L. GILBERT,)
Plaintiffs,)
)
v.)
)
)
DEUTSCHE BANK TRUST COMPANY)
AMERICAS, <i>As Trustee for</i> ,)
RESIDENTIAL ACCREDIT LOANS, INC,)
DAVID A. SIMPSON, P.C., Substitute Trustee,)
RESIDENTIAL FUNDING, LLC, GMAC)
MORTGAGE, LLC, and OCWEN LOAN)
SERVICING, LLC.,)
Defendants.)
)

PLAINTIFFS' REPLY TO DEFENDANT DEUTSCHE BANK TRUST COMPANY
AMERICAS, AS TRUSTEE FOR RESIDENTIAL ACCREDIT LOANS, INC.'S
MEMORANDUM OF LAW IN OPPOSITION TO PLAINTIFFS'
FIRST MOTION FOR LEAVE TO AMEND THE COMPLAINT

Plaintiffs' Rex T. Gilbert, Jr. and Daniela Gilbert, by and through counsel submit this Reply to Defendant Deutsche Bank Trust Company Americas, as Trustee for Residential Accredit Loans, Inc. Memorandum of Law in Opposition to Plaintiffs' First Motion for Leave to Amend the Complaint.

ARGUMENT

.A. The amount financed is wrong in and of itself; *not affected by the overstatement of the fiancé charge.*

Pursuant to 15 U.S.C. § 1638(a)(2)(A), the amount financed shall be computed as follows: (i) take the principal amount of the loan...; (ii) add any charges which are not part of the finance charge or of the principal amount of the loan and which are financed by the consumer, including the cost of any items excluded from the finance charge pursuant to section 1605; and

(iii) subtract any charges which are part of the finance but which will be paid by the consumer before or at the time of the consummation of the transaction, or have been withheld from the proceeds of the credit. 15 U.S.C. § 1638(a)(2)(A).

The Truth in Lending Disclosure Statement, at issue here, disclosed the amount financed as \$507,473.43. Applying the statute to the principal loan amount, Plaintiffs' expert arrived at the amount financed of \$516,639.24, more than \$9,165.81 out of tolerance. .

Principal Loan Amount	\$525,000.00
less: Origination Fee	\$5,250.00
less: Tax Fee	\$78.00
less: Underwriting Fee	\$699.00
less: Interest	\$2,333.76
Total Deductions =	\$8,360.76
Amount Financed	\$516,639.24

(D.E. 95, Ex.2 p. 3). Plaintiffs' expert reviewed the HUD-1 Settlement Statement in applying the terms of the statute to arrive at the correct amount financed. Stated another way, Plaintiff's expert arrived at the correct amount financed without any resort to or consideration of the finance charge. Finally, there is no dispute about the correct amount financed. Defendants' expert took *NO* issue with Plaintiffs' experts' amount financed. The amount financed understatement is *NOT AFFECTED* by the overstatement of the finance charge.

B. Deutsche Bank was from the outset made fully aware of the error in the amount financed.

Plaintiffs' original Complaint filed in September, 2009 alleged an error in the amount financed. (D.E. 74, ¶ 45). Plaintiffs' expert opined in his report the method he used to arrive at the amount financed which did not involve any resort to or consideration of the finance charge.

Plaintiffs' expert's report was delivered in a timely fashion according to the Scheduling Order well ahead of the discovery deadline. Defendant's expert did not take issue with the amount financed set forth by Plaintiffs. It is clearly not properly disclosed and wrong in and of itself unrelated to the finance charge. Further, any prejudice to Deutsche Bank, which there is not, may be ameliorated by granting its request to adjust the Scheduling Order as both parties have now requested. Plaintiffs' hereby consent as this would provide Plaintiffs' counsel with a much needed breathing room for her schedule and her personal, daily struggle.

CONCLUSION

Based upon the foregoing, Plaintiffs respectfully request that this Court grant Plaintiffs' Motion to Amend.

This the 16th day of May, 2016.

/s/ Katherine S. Parker-Lowe
Katherine S. Parker-Lowe
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_____)

CERTIFICATE OF SERVICE

I hereby certify that on 16 May 2016 I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to Amy Puckett and Christian W. Hancock and I hereby certify that I have mailed the document to the following non CM/ECF participant:

David A. Simpson, P.C.
c/o David A. Simpson
501 Minuet Lane, Suite 104A
Charlotte, NC 28217

This the 16th day May 2016.

/s/Katherine S. Parker-Lowe
Katherine S. Parker-Lowe
Attorney for Plaintiffs